

Title 86 Part 100 Section 100.5130 Composite Returns: Required forms and computation of Income

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.5130 Composite Returns: Required forms and computation of Income

- a) Composite Returns of Partners and Shareholders
 - 1) Required form and information. Composite returns of shareholders and partners shall be filed using forms prescribed by the Department. The following information shall be attached to such composite returns: the name, address, social security number and amount of income apportionable and allocable to Illinois for each individual included in the composite return; and the computation of the proper amount of composite income reportable to Illinois.
 - 2) Composite income. The amount of composite income apportionable and allocable to Illinois shall be the sum of the income earned or received for the taxable year from the authorized agent by the persons included in the composite return.
 - A) The composite income of a partnership shall be computed by first computing the partnership's base income, and then including in composite income the entire partnership share of such base income of each resident partner joining in the composite return and the partnership share of the portion of such base income allocable to Illinois per Form IL-1065 of each nonresident partner joining in the composite return. However, the base income of the partnership for this purpose shall be computed without regard to:
 - i) the addition modification under Section 203(d)(2)(C) of the IITA for guaranteed payments to partners other than those partners included in the composite return;
 - ii) the subtraction modification under Section 203(d)(2)(H) for personal service income or for a reasonable allowance for compensation paid or accrued to partners; or
 - iii) the subtraction (or addition) modification under Section 203(d)(2)(I) of the IITA for the share of income (or loss) distributable to a partner subject to Personal Property Tax Replacement Income Tax.

The authorized agent shall pay income tax on the composite income that is attributable to the partners included in the composite return and Personal Property Tax Replacement Income Tax on the portion of the composite income which is attributable to trusts included in the composite return.

- B) The composite income of a Subchapter S corporation shall be computed by first computing the Subchapter S corporation's base income, and then including in composite income the entire share of such base income distributable to each resident shareholder joining in the composite return and the share of the portion of such base income allocable to Illinois per Form IL-1120-ST distributable to each nonresident shareholder. (Line 1 of Part II of the Subchapter S corporation's IL-1120-ST) However, the base income of the Subchapter S corporation for this purpose shall be computed without regard to:
- i) the subtraction modification under Section 203(b)(2)(G) of the IITA for amounts included in federal taxable income under Section 78 of the Internal Revenue Code;
 - ii) the subtraction modification under Section 203(b)(2)(M) of the IITA for interest income from loans secured by property eligible for the Enterprise Zone Investment Credit;
 - iii) the subtraction modification under Section 203(b)(2)(M-I) of the IITA for interest income from loans secured by property eligible for the High Impact Business Investment Credit;
 - iv) the subtraction modification under Section 203(b)(2)(N) of the IITA for contributions to eligible Enterprise Zone projects;
 - v) the subtraction modification under Section 203(b)(2)(O) of the IITA for dividends received from foreign corporations;
 - vi) the subtraction modification under Section 203(b)(2)(P) of the IITA for contributions to job training projects; or
 - vii) the subtraction modification under Section 203(b)(2)(S) for the share of income (or loss) distributable to a shareholder subject to Personal Property Tax Replacement Income Tax.

The authorized agent will pay income tax on the amount of such composite income distributable to shareholders included in the composite return and pay Personal Property Tax Replacement Income Tax on the amount distributable to trusts included in the composite return.

- b) Composite returns of individuals, corporations and other taxpayers transacting an insurance business under a Lloyd's plan of operation. For taxable years ending on and after December 31, 1999, IITA Section 502(f) permits *any persons transacting an insurance business organized under a Lloyd's plan of operation to file composite returns*

reflecting the income of such persons allocable to Illinois and the tax rates applicable to such persons under IITA Section 201 and to make composite tax payments.

- 1) Such composite returns shall be made on Form IL-1023-C.
- 2) Such composite returns shall include an attachment showing the separate federal taxable income (adjusted gross income, in the case of an individual), net amount of addition and subtraction modifications, apportionment fraction and Illinois net income of each underwriter subject to tax under IITA Section 201(a) and electing to join in the composite return, and multiplying each such amount of Illinois net income by the appropriate tax rate under IITA Section 201(b), and shall write the total of such tax liabilities on the Form IL-1023-C line for income taxes. In addition, the attachment shall show the separate federal taxable income, net amount of addition and subtraction modifications, apportionment fraction and Illinois net income of each underwriter subject to replacement tax under IITA Section 201(c) and electing to join in the composite return, and shall multiply each such amount by the appropriate tax rate under IITA Section 201(d), and shall write the total of such tax liabilities on the Form IL-1023-C line for replacement taxes. At the election of the underwriter joining in a composite return, the composite return may include either or both of the Lloyd's plan amounts included in federal taxable income or adjusted gross income by the underwriter and any amounts reported (with payment made of any federal income tax due on such amounts) on behalf of the underwriter by the Lloyd's plan of operation pursuant to a closing agreement with the Secretary of the Treasury under IRC Section 7121. If the Illinois net income of an underwriter included in the composite return is less than zero, such loss may not be used to offset the Illinois net income of any other underwriter included in the composite return or any Illinois net income derived by such underwriter from any source other than the Lloyd's plan of operation. However, in the case of an underwriter other than an individual, such loss may be carried back or forward in the manner allowed under IITA Section 207 as a deduction against the Illinois net income of such underwriter in other years for which a composite return is filed and for which the underwriter's Lloyd's plan has entered into a closing agreement under IRC Section 7121 allowing net operating losses to be carried over on behalf of its underwriters on returns filed by that Lloyd's plan. The schedules showing computations of Illinois net income required by this subsection (b) shall include a separate statement of any Illinois net loss deduction claimed for an underwriter, showing the amount of loss incurred in each year from which the deduction is carried and the amounts of such losses carried to and deducted in years prior to the year for which the schedules are filed. The composite return shall include an attachment showing the name and social security number or taxpayer identification number (or equivalent) of each underwriter who does not elect to join in the composite return.
- 3) Alternative apportionment methods under IITA Section 304(f). IITA Section 304(f) provides that, *if the allocation and apportionment provisions of IITA Section 304(b) do not fairly represent the extent of a person's business activity in this State, the Director may require the person to use another method that will effectuate an equitable allocation and apportionment of the person's business income.*

- A) IITA Section 304(b) provides that an insurance company shall apportion its business income to Illinois *by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this State, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere. For purposes of this subsection (b), the term "direct premiums written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Illinois Director of Insurance in the form approved by the National Convention of Insurance Commissioners or such other form as may be prescribed in lieu thereof.* A Lloyd's plan syndicate reports only its premiums written on property and risks within Illinois on its annual statement filed with the Illinois Director of Insurance. Accordingly, the use of only the "direct premiums written" by underwriters in a Lloyd's plan of operation as actually reported on the annual statements would apportion 100% of the business income of the nonresident underwriters to Illinois, which would not fairly represent the extent of their business activity in Illinois within the meaning of IITA Section 304(f). A Lloyd's plan of operation which files a composite return under this subsection (b) and which does not report on an annual statement its premiums written on property or risks outside the State shall apportion the business income of its nonresident underwriters electing to join in the composite return by multiplying such business income by a fraction, the numerator of which shall be the underwriter's premiums written on property or risks within Illinois as reported on its annual statement and the denominator of which shall be the total of the underwriter's premiums related to amounts included in the apportionable business income of the underwriter.
- B) A Lloyd's plan of operations will commonly use a "year of account" as a basis for the conduct of business of its underwriters. Under the year of account method, a syndicate of underwriters will be in existence for a specified number of years. The syndicate will underwrite policies only in the first year of its existence, which is the year of account. Premiums may be collected and losses incurred by the syndicate only during the years of the syndicate's existence. After the syndicate's existence is terminated at the end of the year of account period, any unexpired policies are reinsured with another syndicate, and profit and loss on all policies for the year of account are determined and recognized for federal income tax purposes. Use of the premiums written in the year after the close of the year of account period to apportion an underwriter's business income earned over that period would not fairly represent the extent of the underwriter's business activity in Illinois that generated that business income. Accordingly, in apportioning the business income recognized after the termination of a year of account period, the direct premiums written on property or risk in this State and on property and risk everywhere shall be the direct premiums written during the year of account period. A composite return that includes for an underwriter both income recognized after the termination of a year of account period apportioned under this subsection

(b)(3)(B) and other income apportioned using the direct premiums written during the taxable year shall show each type of income and each apportionment fraction separately on the schedules attached to the return under subsection (b)(2).

- 4) IITA Section 502(f) provides that *the income and apportionment factors attributable to the transaction of an insurance business organized under a Lloyd's plan of operation by any person joining in the filing of a composite return shall, for purposes of allocating and apportioning income under IITA Article 3 and computing net income under IITA Section 202, be excluded from any other income and apportionment factors of that person or of any unitary business group, as defined in IITA Section 150I(a)(27), to which that person may belong.*
 - A) Because the Lloyd's income and apportionment factors are excluded from the computation of the Illinois income tax liability of any person joining in a composite return under this subsection (b), no credit may be allowed to such person under Section 100.5160 of this Part. Because no underwriter shall be allowed to claim a credit for taxes paid on its behalf under this subsection (b), no administrative burden will be created by allowing an underwriter who is a resident or who has other sources of Illinois income to join in the filing of a composite return and accordingly no underwriter need petition for permission under Section 100.5100(c) or (e) of this Part to join in the filing of a composite return under this subsection (b).
 - B) Because any Illinois income, positive or negative, of an underwriter that is reported on a composite return must be excluded from other income of that underwriter in determining its Illinois net income, an Illinois net loss reported on a composite return may not be used to reduce net income of an underwriter otherwise reportable in the taxable year the net loss is incurred nor carried over to another taxable year to reduce net income of that underwriter, other than net income reported on a Lloyd's plan composite return for that taxable year.
 - C) The statutory provision excluding income reported on a composite return from other income of the underwriter does not imply that the Lloyd's plan business conducted by the underwriter is unitary with any other business conducted by the underwriter. If an underwriter chooses not to join in a composite return, the determination of whether the underwriter's Lloyd's plan business is unitary with any other business conducted by the underwriter and of whether the underwriter is a member of a unitary business group will be made based on the facts and circumstances of the case, without any consideration given to this statutory provision.
- 5) Time for returns and payment. In the case of a Lloyd's plan of operation that files a federal income tax return and pays federal income taxes on behalf of its underwriters for a taxable year pursuant to a closing agreement with the Secretary of the Treasury under IRC Section 7121, the due date for filing a composite return and paying tax under this subsection (b) shall be the due date (including any extensions) for filing the federal return for that taxable year.

- 6) The composite estimated tax vouchers (Forms IL-1023-CES) and the composite returns shall be clearly marked "Composite Payment by Underwriters at Lloyd's, London" or "Composite Return by Underwriters at Lloyd's, London" in the top center of the voucher or return. The tax I.D. number on the voucher or return shall be left blank, and the payment or return shall be mailed to the address specified in the instructions for the Form IL-1023-C.
- 7) Transition rule. Public Act 91-913, allowing Lloyd's plans of operation to file composite returns on behalf of all underwriters for taxable years ending on or after December 31, 1999, was not enacted until July 9, 2000, after the unextended due date for the composite return for calendar year 1999. Accordingly, a Lloyd's plan of operation that had filed a composite return for a taxable year ending on or after December 31, 1999, prior to the enactment of Public Act 91-913, may file a second composite return for that year, on or before the due date in subsection (b)(5), on behalf of any of its underwriters which were unable to join in the composite return prior to the enactment of Public Act 91-913.
- c) Standard exemption. The amount of composite income apportionable and allocable to Illinois shall not be reduced by the standard exemption (see Section 204(a) of the IITA).

(Source: Amended at 25 Ill. Reg. 5374, effective April 2, 2001)